IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 96

DAVIDSON TRANSFER & STORAGE COMPANY, INC.

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

No. 68

T. I. M. E., INC.

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

REPLY BRIEF FOR PETITIONERS

RESPONDENT'S THEORY OF A SHIPPER'S RIGHT TO REPARATIONS

The theory of Respondent's Brief on the first question presented to the Court is that the Motor Carrier Act, Part II of the Interstate Commerce Act, codified and "converted . . . . into a federal cause of action" (R. Br., p. 19) the common law tort of charging an unreasonable rate for common carriage, or, alternatively,

preserved the common law tort as such, together with the common law remedy.

A SHIPPER HAS NO STATUTORY RIGHT OR REMEDY

Let us examine Respondent's first alternative. It is grounded on the requirement in Section 216(b) that rates and charges be just and reasonable. This Section, Respondent says, creates a duty on carriers and a right in shippers. Invoking the old saw that where there's a right there's a remedy, Respondent argues that the Congress must have contemplated that a shipper have redress in damages for the charging of an unreasonable rate.

The Contrast Between Parts I and III and Part II of the Act

The difficulty with this is that Part II of the Interstate Commerce Act, in contrast to Part I, deliberately forecloses such redress. Part I specifically creates a cause of action against a railroad for violation of its provisions and prescribes the remedies for its enforcement. Thus Section 8 provides that if "any [railroad] subject to the provisions of this part shall do, cause to be done, or permit to be done any act . . . prohibited or declared to be unlawful . . . such [railroad] shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation . . ., together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery . . ." Section 9 provides that "any person or persons claiming to be damaged by any [railroad] subject to the provisions of this part may either make complaint to the Commission [pursuant to Section 13(1)] or may bring

suit in his or their own behalf for the recovery of the damages . . . in any district . . . court of the United States of competent jurisdiction . . ." Section 16(1) provides that if, "after hearing on a complaint . . . the Commission determines that any party complainant is entitled to an award of damages under the provisions of this part for a violation thereof, the Commission shall make an order directing the carrier to pay . . ." Section 16(2) provides that if the carrier "does not comply with an order for the payment of money within the time limit in such order, the complainant . . . may file in the district court . . ." for the district in which he resides a complaint setting forth briefly the causes for which he claims damages and the order of the Commission in the premises." Section 16(2)(b) provides that "complaints against carriers subject to this part for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues. . . ."

Part II of the Act, enacted on August 9, 1935, the same day on which all of the foregoing Sections of Part I were amended in various minor ways, contains no provisions comparable to them. Its only reference to private redress against motor carriers is found in Section 204a(2), enacted on June 29, 1949. That Section requires actions at law for the recovery of overcharges, defined in Section 204a(5) to exclude charges based on applicable rates, to be brought within two years of the time the cause of action accrues. On the other hand Part III of the Act, enacted in 1940 to bring certain common carriers by water within the regulatory jurisdiction of the Interstate Commerce Commission, contains provisions for private redress

that are the precise counterpart of those contained in Part I.[1]

As Respondent says (R. Br., p. 18), "Congress was aware of these principles [adopted by it in the foregoing Sections of Part I of the Interstate Commerce Act] when it undertook to regulate interstate motor carriers and must be deemed to have acted in the light of them." We submit that the sharp contrast between Part I and Part II demonstrates that the Congress, acting in the light of them, chose not to make them applicable to motor carriers. Having, by Section 8 of Part I, specifically created a cause of action against rail carriers, it could not have intended its general requirement in Section 216(b) of Part II that rates be just and reasonable, which has its counterpart in Section 1(4) of Part I, to create a cause of action against motor carriers. As this Court said in *Montana*, that requirement creates a criterion for administrative action and not a justiciable legal right. 341 U. S. 246, 251.

The Intent of the Congress as Judicially Ascertained

Two related cases, the latter decided by the Supreme Court of Oregon on October 15, 1958, are very much in point. They are *Consolidated Freightways* v. *United Truck Lines*, 216 F. 2d 543 (C. A. 9th 1954), cert. den. 349 U. S. 905; *Consolidated Freightways* v. *United Truck Lines*, 330 P. 2d (adv.) 522, (S. Ct. Ore. 1958). In the first Consolidated brought suit in a United States District Court for damages against United. The

[1] The absence of provisions for private redress in Part II and the presence of such provisions in Part III is noted in the compilation of the Interstate Commerce Act and Supplementary Acts made and printed as of November 1, 1951, pursuant to Senate Resolution 205, 82nd Congress, 1st Sess., S. Doc. 72.

gravamen of the complaint was that United had been engaged as a common carrier by motor in the transportation of property in interstate commerce without a certificate of public convenience and necessity from the Interstate Commerce Commission in violation of Section 206 of Part II of the Interstate Commerce Act. The District Court dismissed the suit on the ground that there was no diversity of citizenship between the parties and no federal question presented. The Court of Appeals affirmed. In so doing it held:

> ". . . Part II makes provision only for criminal penalties and injunctive remedies to be sought by the Commission. In contrast with Part I, Part II is silent as to any private remedy for a violation of any of its provisions. This omission is significant, and persuades us that Part II is to be regarded as a wholly independent legislative enactment in which Congress deliberately elected to provide no remedies for violation of any of its provisions other than those carefully spelled out in Part II itself." 216 F. 2d at p. 545.

Thereafter Consolidated brought suit for damages against United in a state court in Oregon alleging that the latter's operations in violation of the Interstate Commerce Act constituted the common law tort defined in the Section 710 of the Restatement of Torts as follows:

> "Section 710. Engaging in Business in Violation of Legislative Enactment.
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> "One who engages in a business or profession in violation of a legislative enactment which prohibits persons from engaging therein, either absolutely or without a prescribed permission, is subject to liability to another who is engaged in the business or profession in conformity with the enactment, if, but only if,

"(a) one of the purposes of the enactment is to protect the other against unauthorized competition, and

"(b) the enactment does not negative such liability."

The Supreme Court of Oregon, in an exhaustive and well reasoned opinion, held that the suit would not lie. First treating with the plaintiff's burden to establish that "one of the purposes of the Motor Carrier Act is to protect a certificate holder from unauthorized competition" the Court held:

> "... It is our opinion that incidental to the objective of the Motor Carrier Act to protect the public from the harm arising out of unregulated competition was the intention to protect a certificate holder from unauthorized competition and that the plaintiff would be entitled to recover under the principle stated in Section 710 of the Restatement of Torts if the Motor Carrier Act does not negative liability. . . ." 330 P. 2d at p. 523.

The Court then went on to consider whether the plaintiff had established that the Motor Carrier Act does not negative liability.[2] It pointed out that Section 8 of Part I and Section 322(b) of Part III of the Act make rail and water carriers, respectively, liable for violations of it "*to the person or persons injured thereby for the full amount of damages sustained.*"

In contrast, said the Court, Section 222(b) of Part II merely provides that if "any motor carrier or broker operates in violation of [it] *the Commission or its duly authorized agent* may ap-

[2] It is to be noted that the burden of going forward with evidence and the burden of persuasion on this issue is on the party asserting the right—the plaintiff in *Consolidated* and the Respondent here.

ply to the District Court of the United States where such motor carrier or broker operates" for enforcement. 330 P. 2d at p. 524. (Emphasis the Court's). In this connection the Court noted that Part II as enacted in 1935 was an amended version of HR 6836, introduced as the Rayburn Bill in 1934, which earlier bill had given not only the Commission but also "any party injured" by violations of it a right of action.

Concluding that the private cause of action created in Parts I and III of the Interstate Commerce Act was not "unwittingly omitted" from Part II, and that "the Congress intended to vest in the Interstate Commerce Commission the sole authority to enforce the provisions of the Act, precluding private relief in both federal and state courts either by way of injunction or damages," 330 P. 2d at p. 529, the Court went on to explain why. It emphasized that the legislative history of Part II makes clear "that the regulation of motor carriers was regarded as presenting problems not involved in the regulation of rail and water transportation."

> ". . . In the reports of the Congressional hearings there are frequent references to the chaotic condition of motor carrier transportation, chiefly resulting from the fact that at the time the proposed Act was being considered there were over 200,000 trucks in operation, 40,000 of which were operated by approximately 10,000 common carriers. In testifying before the Committee on Interstate and Foreign Commerce of the House of Representatives, Joseph B. Eastman, then Federal Coordinator of Transportation, stated:
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> "'While I am confident that regulation will prove practicable, I also realize the difficulties which will be encountered. In order to meet that, the Commission, in the course of its regulations, will have to feel its way along and be guided by

experience as it goes on, and changes in the law may prove necessary because of that experience.' Hearing Before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 74th Congress, 1st Session, on HR 5262 and HR 6016 (1935) page 29.

"There was ample reason for vesting in the Interstate Commerce Commission exclusive control over the regulation of motor carrier transportation, including the pre-emption of the remedies for violation of the Motor Carrier Act. The variety of operations carried on by large and small contract carriers, common carriers and carriers for hire on overlapping routes under licenses varying in scope, presented unique problems of regulation. At the outset at least it would seem necessary to have some unified and exclusive control in an administrative body in order that the conflicts arising out of the chaotic condition of the industry could be resolved on a systematic and sensible basis. . . ." 330 P. 2d at p. 528.

It is to be remembered, and this Court can take judicial notice of the fact that the most serious result of this chaotic condition—10,000 motor carriers competing with one another in the middle of the Great Depression—was that rates were being steadily forced down. Thus the problem in the motor carrier industry, as in virtually every other industry, was not to protect buyers from unreasonably high rates but to protect sellers from unreasonably low rates.[3] As Respondent says in Footnote 9 on Page 25 of its Brief: "The bill's proponents hoped that regulation of rates would *raise* them from the uneconomic levels at which

[3] Fierce competition and consequent destructive "rate wars" are still a major problem in the trucking industry. The vast bulk of the rate proceedings before the Interstate Commerce Commission are to keep rates from falling below the zone of reasonableness, not to keep them from rising above it.

they stood in 1935." (Emphasis supplied). Viewed in this perspective the deliberate withholding by the Congress of any right in shippers to reparations is entirely sensible and understandable.

A SHIPPER HAS NO COMMON LAW RIGHT OR REMEDY

Let us now examine Respondent's alternative theory, i.e., that Part II of the Interstate Commerce Act left intact as such the common law tort of charging an unreasonable rate, together with the common law remedy. Supplementing our demonstration of the unsoundness of this argument in our Main Brief, p. 19 *et seq.*, we submit that a fatal defect of this theory is that it overlooks the fact that an essential element of the tort is that the rate charged be unreasonable. As this Court said in *Montana*, 341 U. S. at p. 253, speaking of the fraudulent exaction of an unreasonable rate, the issue of reasonableness is not one severable from the issue of liability, "for the acts charged do not amount to fraud unless there has been an unreasonable charge. Injury is an essential element of remedial fraud." So here, as there, the reasonableness of the rate is not only determinative on the issue of damages *vel non*, but on the issue of the commission of the tort *vel non*.

No Tribunal Can Determine the Reasonableness of Past Rates

It follows here, as it did in *Montana*, that no cause of action can exist unless some tribunal has authority to adjudicate the reasonableness of the rate charged. The law is clear, and Respondent concedes, that no court can adjudicate the reasonableness of the past rates of a common carrier by motor regulated by the Interstate Commerce Commission. Can the Commission do so? If not, a claim that such rates were un-

reasonable fails to state either a cause of action for damages or a defense sufficient in law to a suit by the carrier for charges based on such rates.

Respondent concedes that Part II of the Interstate Commerce Act grants the Commission no specific power to determine the reasonableness of the past rates of motor carriers. It therefore seeks, as did the Commission in *Bell Potato Chip Co.* v. *Aberdeen Truck Line,* 43 M. C. C. 337, (1944), to infer the power from "the general powers expressly conferred upon [the Commission] in Sections 216(b), (d), (e), and 204 (a)(6), (c), (d)." (R. Br., p. 31). Let us examine those Sections. Sections 216(b) and (d) grant the Commission no power. They merely make it the duty of carriers to establish, observe and enforce just and reasonable rates, charges, classifications and practices, and prohibit and declare unlawful unjust and unreasonable charges. Section 216(e) gives the Commission power to act prospectively only. It permits it to investigate, upon complaint or *sua sponte* rates, charges, classifications or practices "in effect or proposed to be put into effect." If after hearing it finds that any such rate, charge, classification or practice "is or will be" unjust or unreasonable it shall determine the rate or charge "thereafter to be observed" or the classification or practice "thereafter to be made effective."

Sections 204(a)(6), (c), and (d), are no more than statements of the general powers and duties of the Commission. Section 204(d) is irrelevant. It merely incorporates by reference the provisions of Section 14 of Part I requiring the Commission to make reports, and Section 16(13) making tariffs, etc., public records and *prima facie* evidence of what they purport to be.

Section 204(a)(6) makes it the duty of the Commis-

sion to "administer, execute and enforce all provisions" of Part II of the Act, and "to make all necessary orders in connection therewith." As for this Section, it is axiomatic that the imposition of a duty to administer a statute and to make necessary orders in so doing neither defines the function of the administrator nor confers any substantive authority on him. Much less does it vitiate specific limitations of authority contained in the statute, such as the limitation of the Commission's authority to determine the reasonableness of rates contained in Section 216(e).

Section 204(c) authorizes the Commission, upon complaint or *sua sponte*, to "investigate whether any motor carrier or broker has failed to comply with any provision of [Part II of the Act], or with any requirement established pursuant thereto." If it finds a failure it "shall issue an appropriate order to compel the carrier or broker to comply therewith." The Federal Power Commission is given equivalent authority in the Federal Power Act (Sections 306, 307(a), 309) and in the Natural Gas Act (Sections 13, 14(a) and 16).

This grant of general authority to the Interstate Commerce Commission to investigate violations of the law and to order compliance therewith no more gives it power to determine the reasonableness of past rates or to order reparations than do the similar grants of authority in the Power Act and the Gas Act give the Federal Power Commission such power. See *Montana, supra*, and *Hope Natural Gas Co.* v. *F. P. C.*, 134 F. 2d 287, 310 (C. A. 4th 1943). To hold that it does would be to hold that Sections 216(e) and 216(g), which grant specific and carefully defined powers over rates, are mere surplusage. It follows that Section 204(c) and Section 216 must deal with separate and

distinct matters. That they do can be easily demonstrated from the facts of the *Bell Potato Chip* Case. There was no question but that the rates in issue there were filed with and accepted by the Commission pursuant to Section 217 of the Act. Clearly the carrier was not violating the Act by collecting charges based on those rates. On the contrary, to use the Commission's language in that very case, a "carrier must adhere strictly to its filed tariffs, and departures and variations therefrom are forbidden." 43 M. C. C. at p. 341.

In other words, had the carrier acquiesced in the shipper's demand for refund it would have "failed to comply" with Section 217(b) of the Act, which forbids a carrier to deviate from filed rates or to "refund or remit in any manner or by any device . . . any portion" thereof. It would thereby have subjected itself to investigation under Section 204(c) upon the Commission's own motion, or upon complaint by any person. As the result of such an investigation the Commission would have been *required* to issue an order to compel it to adhere to its tariffs, for Section 204(c) provides that if the Commission "finds . . . that the motor carrier . . . has failed to comply with any such provision or requirement the Commission *shall* issue an appropriate order to compel" compliance. Certainly it would have been no defense that the filed tariff was thought to be unreasonable. Thus, in relying on Section 204(c), the *Bell Potato Chip* Case makes the startling holding that the Commission's power in Section 204(c) to compel adherence to filed tariffs is the power to justify, indeed effectively to compel, an illegal departure from filed tariffs.

The only rational interpretation of Section 204(c) is that it, like the comparable sections of the Power

Act and the Gas Act, is one means of assuring compliance by carriers with those duties imposed by the Act in the performance of which there is no element of discretion, such as there is in the determination whether particular rates are reasonable. The other means is Section 222(b), which permits the Commission to apply to a federal district court for enforcement of any duty of any motor carrier or broker "*except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof.*" (Emphasis supplied).

The Commission's Various Rationales of Its Alleged Authority

The fact is that neither the Commission nor shippers have ever actually used Section 204(c). Complaints directed to the reasonableness of past rates are brought, considered and determined under Section 216(e). See the cases in the Commission cited at Footnote 12 on page 34 of Respondent's Brief. Although, as we have seen, Section 216(e) provides only for (1) complaints directed to existing or proposed rates; (2) findings on existing or proposed rates with prospective force, and (3) orders prescribing rates thereafter to be observed, the Commission justifies the determination of the reasonableness of past rates under it on the theory that "a necessary part of [its] power to prescribe rates for the future [is] authority to examine the entire rate situation under consideration and determine what rates were applicable and lawful on past shipments when that issue is raised." *Enamel Co. v. Cushman*, 11 M. C. C. 365, 367 (1939). This theory had perhaps a scintilla of plausibility in cases in which a complaint to the Commission alleged that rates in effect at the time it was filed were unreasonable in the past and would be unreasonable in the future. However, it

was rejected even in that situation in *Hope Natural Gas Co.* v. *F. P. C., supra.* In any event, it was obviously useless in cases where only the reasonableness of past rates was in issue. Nevertheless, it was adopted in such cases. See *Kingan and Co.* v. *Olson Trans. Co.*, 32 M. C. C. 10 (1942). It was not until the *Bell Potato Chip* Case in 1944, in which the Commission's attention was called to the *Hope* Case, that it sought to broaden the base of its alleged authority by invoking Section 204(c). We have shown that reliance on this Section is misplaced.

Judicial review of the *Bell* Case was not sought and the Commission's authority was not again seriously challenged in Court or Commission until *U. S.* v. *Davidson*, 302 I. C. C. 87 (1958). In that case Davidson brought suit against Respondent in the United States District Court for the District of Columbia for its charges. Respondent defended on the ground that the rates on which the charges were computed were unreasonable and simultaneously filed a complaint with the Commission under Section 216(e) of Part II of the Act. Davidson moved to dismiss the complaint for want of authority in the Commission to entertain it. An Examiner of the Commission recommended that the motion be granted. On exceptions to his Report the Commission in effect admitted that under the *Montana* holding it has no authority to entertain a complaint alleging that the past rates of a motor carrier were unreasonable unless "a cause of action to which the issue of reasonableness is subsidiary is maintainable in the court in which it is brought." It then went on, with three Commissioners dissenting, to misinterpret *Montana* as Respondent misinterprets it here, i.e., as holding only that a complaint for damages for the

charging of allegedly unreasonable rates states no *federal* cause of action.

Taking the view that the issue of the past reasonableness of Davidson's rates was subsidiary to its suit for its charges, the Commission concluded that it could entertain a complaint that those rates were unreasonable. In so doing it said that "it is not our province to pass on the ultimate questions of whether complainant or defendant in the present proceeding would prevail in the pending court action." A strange statement indeed since the only issue joined by the answer to Davidson's suit was the reasonableness of the rates on which its charges were based.[4]

Thus the Commission has in effect abandoned the rationale of the *Bell Potato Chip* case, i.e., that Part II of the Interstate Commerce Act gives it independent authority to determine the reasonableness of the past rates of motor carriers. It now says that it has authority as a "collaborative instrumentality of justice" with the courts. It therefore now holds that absent unusual circumstances, the pendency of a suit timely filed in a court of competent jurisdiction "is a condition precedent to our entertainment of a complaint alleging unreasonableness, unjust discrimination, or undue prejudice in the past." *Schensker, Trustee* v. *Ellis Trucking*

[4] The Commission's denial of the motion to dismiss is now on review in the United States District Court for the District of Maryland, by way of suit for injunction brought pursuant to Section 1336 of the Judicial Code. *Davidson Transfer & Storage Co.* v. *U. S. and I. C. C.*, Civil No. 10433. On August 15, 1958, Chief Judge Thomsen denied the Commission's motion to dismiss the suit for lack of jurisdiction grounded on the theory that its finding that the rates in issue were unreasonable was a purely advisory one made to aid the Court in resolving the issue of reasonableness raised by Respondent as a defense to Davidson's suit for its charges. Thereafter Chief Judge Thomsen stayed further proceedings pending this Court's disposition of the instant case.

Co., 302 I. C. C. 701 (1958).[5] Moreover, it frankly recognizes that in entertaining such complaints it is acting in a judicial capacity. *National Distillers and Chemical Corp.* v. *Helm's Express, Inc.*, No. 32384, is a proceeding on a complaint seeking a determination of the reasonableness of the past rates of a motor carrier. On December 15, 1958 the Commission denied intervention to two associations of motor carriers making and publishing rates and classifications related to those under attack pursuant to agreements approved by the Commission under the Bulwinkle Act. (49 U. S. C. A. § 5a), "for the reason that this proceeding is an adversary proceeding to determine private rights . . ." As we have heretofore shown, the Commission has no judicial authority under Part II of the Interstate Commerce Act.

THE CONGRESS HAS NOT ADOPTED RESPONDENT'S MISINTERPRETATION OF THE FACT

Respondent seeks comfort in its claim that the Congress "is fully aware of the doctrine of *Bell Potato Chip, supra*, and has not seen fit to change it." (R. Br., p. 33, fn. 11). In short it invokes the theory of legislative acquiescence—that silence is assent. One who would carry his burden of proof on this theory has a heavy burden indeed. In the law of evidence silence is deemed to be assent only when no other explanation is equally consistent with silence. See 4 Wigmore, Evidence (3rd ed. 1940) 70. In *Helvering* v.

[5] The Commission has not defined its phrase "unusual circumstances." However, the fact that the complainant in *Schensker* was a Trustee in Bankruptcy charged with ascertaining assets was held not to be a sufficiently unusual circumstance to justify it in entertaining the complaint, the object of which was to determine whether the bankrupt's assets included money paid for freight charges based on unreasonably high rates.

Hallock, 309 U. S. 106, 119 this Court said: "It would require very persuasive circumstances to debar this Court from re-examining its own doctrines"—to say nothing of correcting the errors of lower courts. This statement was quoted with approval in *Girouard* v. *U. S.*, 328 U. S. 61. Holding that the enactment of the Nationality Act of 1940 was not Congressional adoption of erroneous constructions of earlier acts made by this Court, Mr. Justice Douglas said:

> "We are met, however, with the argument that even though those cases were wrongly decided, Congress has adopted the rule which they announced. The argument runs as follows: Many efforts were made to amend the law so as to change the rule announced by those cases; but in every instance the bill died in committee. Moreover, in 1940 when the new Naturalization Act was passed, Congress reenacted the oath in its pre-existing form, though at the same time it made extensive changes in the requirements and procedure for naturalization. From this it is argued that Congress adopted and reenacted the rule of the Schwimmer, Macintosh, and Bland cases. Cf. Apex Hosiery Co. v. Leader, 310 U. S. 469, 488, 489, 60 S. Ct. 982, 989, 990, 84 L. Ed. 1311, 128 A. L. R. 1044.
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> . . . "It is at best treacherous to find in Congressional silence alone the adoption of a controlling rule of law. We do not think under the circumstances of this legislative history that we can properly place on the shoulders of Congress the burden of the Court's own error. The history of the 1940 Act is at most equivocal. It contains no affirmative recognition of the rule of the Schwimmer, Macintosh and Bland cases. The silence of Congress and its inaction are as consistent with a desire to leave the problem fluid as they are with an adoption by silence of the rule of those cases. . . ."

The objections to finding legislative intent from the absence of legislative action are well summarized in the opinion of the late Justice Rutledge in *Cleveland v. U. S.*, 329 U. S. 14, 22;

"Notwithstanding recent tendency, the idea cannot always be accepted that Congress, by remaining silent and taking no affirmative action in repudiation, gives approval to judicial misconstruction of its enactments. See Girouard v. United States, 328 U. S. 61, 66 S. Ct. 826. It is perhaps too late now to deny that, legislatively speaking as in ordinary life, silence in some instances may give consent. [Footnote omitted]. But it would be going even farther beyond reason and common experience to maintain, as there are signs we may be by way of doing, that in legislation any more than in other affairs silence or nonaction always is acquiescence equivalent to action.

"There are vast differences between legislating by doing nothing and legislating by positive enactment, both in the processes by which the will of Congress is derived and stated [Footnote omitted] and in the clarity and certainty of the expression of its will. [Footnote omitted]. And there are many reasons, other than to indicate approval of what the courts have done, why Congress may fail to take affirmative action to repudiate their misconstruction of its duly adopted laws. Among them may be the sheer pressure of other and more important business. See Moore v. Cleveland R. Co., 6 Cir., 108 F. 2d 656, 660. At times political considerations may work to forbid taking corrective action. And in such cases, as well as others, there may be a strong and proper tendency to trust to the courts to correct their own errors, see Girouard v. United States, supra, 328 U. S. 69, 66 S. Ct. at page 830, as they ought to do when experience has confirmed or demonstrated the errors' existence.

> "The danger of imputing to Congress, as a result of its failure to take positive or affirmative action through normal legislative processes, ideas entertained by the Court concerning Congress' will, is illustrated most dramatically perhaps by the vacillating and contradictory courses pursued in the long line of decisions imputing to 'the silence of Congress' varied effects in commerce clause cases. [Footnote omitted]. That danger may be and often is equally present in others. More often than not the only safe assumption to make from Congress' inaction is simply that Congress does not intend to act at all. . . ."

Apart from the fact that the silence of one Congress on a statute permits only a guess as to the intent of the earlier Congress which enacted it, we submit that sound principle forbids the use of legislative history at all where, as here, the statute is clear and unambiguous. As the late Justice Holmes said, "we do not inquire what the *legislature* meant, we ask only what a *statute* means." Quoted by the late Justice Jackson in an address to the American Law Institute, 34 A. B. A. Journal 535, 537. This Court, not the Congress, is the arbiter of the meaning of the statutes of the United States. As such it has the duty to correct misinterpretations of them by inferior tribunals. To refuse to do so here would be to treat the silence of the Congress as the exercise by it of a responsibility which it does not have.

CONCLUSION

In sum the matter comes to this: No court can adjudicate Respondent's claim that it was charged unreasonable rates in the past because no court can determine the reasonableness of the rates of a common carrier by motor regulated by the Interstate Commerce

Commission. The Interstate Commerce Commission cannot adjudicate Respondent's claim because its authority is only the legislative power to fix rates for the future. The inevitable consequence is that there is no legal right in a shipper to any rate other than the rate filed and effective at the time the transportation is performed. Respondent can no more escape this consequence than one can pull himself up by his own bootstraps. In law two minuses do not make a plus. The absence of authority in the Commission cannot be coupled with the absence of authority in the Court to create authority in both.

Respectfully submitted,

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